

# Inspector General

United States  
Department of Defense



Air Force Aeronautical Systems Center Contracts  
Awarded Without Competition Were Properly Justified

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>10 MAY 2012</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2012 to 00-00-2012</b>	
4. TITLE AND SUBTITLE <b>Air Force Aeronautical Systems Center Contracts Awarded Without Competition Were Properly Justified</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Department of Defense Office of Inspector General, 4800 Mark Center Drive, Alexandria, VA, 22350-1500</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>34</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

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## Acronyms

AFMC	Air Force Materiel Command
ASC	Aeronautical Systems Center
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System – Next Generation
GAO	Government Accountability Office
J&A	Justification and Approval



INSPECTOR GENERAL  
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May 10, 2012

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
ASSISTANT SECRETARY OF THE AIR FORCE  
(FINANCIAL MANAGEMENT AND COMPTROLLER)

SUBJECT: Air Force Aeronautical Systems Center Contracts Awarded Without  
Competition Were Properly Justified (Report No. DODIG-2012-084)

We are providing this report for your information and use. This report is the fifth in a series of audit reports on DoD contracts awarded without competition. Air Force Aeronautical Systems Center personnel properly prepared and approved adequate sole-source justifications and approvals for other than full and open competition and generally documented compliance with additional Federal requirements to support those sole-source determinations. We are publishing this report in final form because no written response to this report was required, and none was received.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077). If you desire, we will provide a formal briefing on the results.

*Jacqueline L. Wicecarver*  
Jacqueline L. Wicecarver  
Assistant Inspector General  
Acquisition and Contract Management





# Results in Brief: Air Force Aeronautical Systems Center Contracts Awarded Without Competition Were Properly Justified

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## What We Did

Our audit objective was to determine whether DoD noncompetitive contracts were properly justified as sole source. This report is the fifth in a series of reports on DoD contracts awarded without competition and includes contracts issued by the Air Force Aeronautical Systems Center (ASC). We reviewed 23 noncompetitive contracts with an obligated value of about \$519 million that ASC contracting personnel awarded in FY 2010 and FY 2011.

Full and open competition is the preferred method for Federal agencies to award contracts. Section 2304, title 10, United States Code, and Section 253, title 41, United States Code require contracting officers to promote and provide for full and open competition when soliciting offers and awarding contracts. Contracting officers may use procedures other than full and open competition under certain circumstances. However, each contract awarded without providing for full and open competition must conform to policies and procedures in Federal Acquisition Regulation (FAR) Subpart 6.3, "Other Than Full and Open Competition."

## What We Found

ASC contracting personnel properly prepared and approved sole-source justifications and approvals (J&As) for other than full and open competition and generally documented compliance with additional Federal requirements to support those sole-source determinations for 23 contracts.

ASC contracting personnel:

- included all required data elements in the J&As;
- appropriately applied the cited authority permitting other than full and open competition in the J&As;
- obtained approval from the proper authorities to issue noncompetitive contract awards;
- generally documented compliance with FAR Part 10, "Market Research," in the contract file; and
- complied with FAR Subpart 5.2, "Synopsis of Proposed Contract Actions," when synopsisizing actions that required a presolicitation notice, with the exception of including all required language in the presolicitation notice.

## Management Comments

We do not require a written response to this report.





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# **Introduction**

## **Objective**

Our objective was to determine whether noncompetitive contract awards were properly justified as sole source at Air Force Aeronautical Systems Center (ASC), Wright Patterson Air Force Base, Ohio. This report is the fifth in a series of reports on DoD contracts awarded without competition. See Appendix A for the scope and methodology and prior coverage related to the objective.

## **Background**

Full and open competition is the preferred method for Federal agencies to award contracts. Section 2304, title 10, United States Code, “Contracts: Competition Requirements,” and section 253, title 41, United States Code, “Competition in Contracting Act of 1984,” require contracting officers to promote and provide for full and open competition when soliciting offers and awarding contracts. Promoting competition in Federal contracting presents the opportunity for significant cost savings. In addition, competitive contracts can help improve contractor performance, prevent fraud, and promote accountability for results.

Contracting officers may use procedures other than full and open competition under certain circumstances. However, each contract awarded without full and open competition must conform to policies and procedures in the Federal Acquisition Regulation (FAR) Subpart 6.3, “Other Than Full and Open Competition.”

FAR Subpart 5.2, “Synopsis of Proposed Contract Actions,” establishes policy to require agencies to make notices of proposed contract actions available to enhance competition. FAR Part 10, “Market Research,” provides policies and procedures for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. See Appendix B for additional information on FAR subpart 6.3, FAR subpart 5.2, and FAR part 10.

## **Air Force Aeronautical Systems Center**

ASC is the largest of three product centers within the Air Force Materiel Command (AFMC). ASC designs, develops, and delivers aerospace weapon systems and capabilities for the U.S. Air Force, other U.S. military; and allied and coalition-partner warfighters in support of Air Force priorities. ASC manages more than 400 Air Force joint and international aircraft acquisition programs and related projects and executes an annual budget of \$23 billion. ASC’s portfolio includes capabilities in fighters and bombers; intelligence, surveillance and reconnaissance; special operations forces; mobility; combat support; and the KC-46A tanker.

## **Contracts Reviewed at ASC**

Based on our Federal Procurement Data System - Next Generation (FPDS-NG) queries, ASC contracting personnel awarded 242 C and D type contract actions<sup>1</sup> with an obligated value<sup>2</sup> of about \$1 billion during FY 2010 and FY 2011. Of the 242 contract actions, ASC contracting personnel awarded 64 noncompetitive contracts, with an obligated value of \$923 million that were within the scope<sup>3</sup> of our review. We selected a nonstatistical sample of 31 noncompetitive contracts with an obligated value of \$913 million to review. We excluded 17 contracts from our initial sample because they were outside the scope of our audit: 12 cited the national security exemption, 4 were small business set asides, and 1 was improperly coded in the FPDS-NG as a noncompetitive contract. We also excluded two contracts because one contract was transferred to a different contracting office and one contract will be reviewed in a separate audit. During fieldwork we added an additional 11 noncompetitive actions for review. In total, we reviewed 23 contracts with an obligated value of about \$519 million (the total value of the 23 contracts, as of October 17, 2011, was about \$1.8 billion). See Appendix C for specific noncompetitive contract awards reviewed.

## **Review of Internal Controls at ASC**

DoD Instruction 5010.40, “Managers’ Internal Control Program (MICP) Procedures,” July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. ASC’s internal controls over its processes for issuing noncompetitive contract awards we reviewed were effective as they applied to the audit objective.

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<sup>1</sup> Defense Federal Acquisition Regulation Supplement 204.7003, “Basic PII Number,” defines C type contracts as “Contracts of all types except indefinite delivery contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD,” and D type contracts as “Indefinite delivery contracts.”

<sup>2</sup> Data obtained in FPDS-NG is reported on an individual action basis (that is, single modification). As a result, we combined all actions identified for a given contract to determine the number of contracts awarded during FY 2010 and FY 2011 and their respective obligated amounts.

<sup>3</sup> Our scope was limited to actions issued on contracts that were awarded during FY 2010 and FY 2011. Actions were coded as either a “noncompetitive delivery order” or “not competed” and did not receive more than one offer as identified in FPDS-NG.

## ASC Contract Awards Were Properly Justified As Sole Source

ASC contracting personnel properly justified the use of other than full and open competition on the Justification and Approvals (J&As) for other than full and open competition for all 23 contracts, with an obligated value of about \$519 million. ASC contracting personnel complied with FAR 6.303-2, "Content," requirements in the J&As, appropriately applied the authority cited for permitting other than full and open competition for all 23 J&As, and obtained approval from the proper personnel before contract award. Further, ASC contracting personnel generally documented compliance with FAR part 10, "Market Research," and FAR subpart 5.2, "Synopsis of Proposed Contract Actions," in the contract files to support sole-source determinations.

## ASC Procurements Reviewed Required Awarding Sole-Source Contracts

ASC contracting personnel had limited or no opportunities to fully compete 17 of the 23 contracts reviewed because of the specialized nature of products and services being procured. ASC contracting personnel could not reasonably compete the 17 contracts because only the original equipment or software manufacturer could meet the Government's requirements. ASC contracting personnel awarded the remaining 6 sole-source contracts for short term service bridge contracts, 5 of which maintained coverage before issuance of a competitive action. Table 1 below illustrates the contract source, the number of contracts, and the dollar value for the contracts reviewed at ASC. ASC contracting personnel properly justified the use of other than full and open competition for all 23 contracts reviewed.

**Table 1. Number of Contracts and Dollar Value by Contract Source**

<b>Contract Source</b>	<b>Number of Contracts</b>	<b>Dollar Value</b>
Original equipment manufacturer	14	\$1,659,176,316
Original service provider	3	84,152,152
Short term bridge contract	6	14,795,333
<b>Total</b>	<b>23</b>	<b>\$1,758,123,801*</b>

\*Total obligated value as of October 17, 2011.

## ASC Personnel Adequately Supported Sole-Source Determinations

ASC contracting personnel adequately supported the use of other than full and open competition on the J&As for all 23 contracts. ASC contracting personnel documented all the required elements of FAR 6.303-2 and obtained approval from the proper official within the required time frames for each of the 23 J&As. In addition, ASC contracting

personnel properly justified the issuance of the noncompetitive contract in the J&As. FAR 6.302, “Circumstances Permitting Other Than Full and Open Competition,” lists the seven exceptions permitting contracting without full and open competition. A contracting officer must not begin negotiations for or award a sole-source contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification.

### ***ASC Personnel Complied With J&A Content Requirements***

ASC personnel adequately documented compliance with content requirements for the 23 J&As. FAR 6.303-2 identifies the minimum information that must be included in a J&A. FAR 6.303-1, “Requirements,” requires the contracting officer to: justify the use of full and open competition, certify the accuracy and completeness of the J&A, and obtain the proper approval. ASC contracting personnel complied with the FAR requirements for all 23 actions reviewed. In addition, ASC contracting personnel properly documented that the contract action was within the scope for all 8 actions awarded under a Class J&A<sup>4</sup> as required by FAR 6.303-1.

### **ASC Personnel Met J&A Content Requirements**

ASC personnel prepared J&As for other than full and open competition that complied with the FAR 6.303-2 content requirements. Contracting officers must follow FAR 6.303-2 which identifies the minimum information that must be included in a J&A. FAR 6.303-2 requires that the J&A include a description of the supplies or services required to meet the agency’s needs, the estimated value, and the statutory authority permitting other than full and open competition. The J&A must also include a statement of the actions the agency may take to remove any barriers to competition before any subsequent acquisition for the supplies or services. ASC contracting personnel included all of the required elements as outlined in FAR 6.303-2 in the J&As for all 23 actions.

### **ASC Personnel Met J&A Market Research Content Requirements**

ASC personnel adequately documented their market research efforts in the J&As for all 23 contracts reviewed. FAR 6.303-2 states that the J&A should include a description of the market research conducted and the results, or a statement of the reason market research was not conducted. Additionally, FAR 6.303-2 requires a listing of sources, if any, that expressed, in writing, an interest in the acquisition. ASC contracting personnel included a description of the market research performed or a statement of the reason market research was not performed, and a listing of sources, as required by FAR 6.303-2, in all 23 J&As.

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<sup>4</sup> A class J&A provides authority for a class (or group) of contracts for the same or related supplies or services that require essentially identical justifications. The contracting officer must make a written determination that an individual contract action may be awarded within the scope of a class J&A before such actions are awarded. FAR 6.303-1(c).

### ***ASC Personnel Appropriately Applied the Sole-Source Authority Cited***

ASC personnel appropriately applied the cited authority permitting other than full and open competition in each of the 23 J&As reviewed. Contracting personnel awarded 22 contracts that cited the authority of FAR 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.” For each of the 22 contracts, ASC personnel provided adequate rationale in the J&A as to why only one contractor could provide the required product or service and why only that product or service could meet the Government’s requirements. ASC contracting personnel awarded one contract that cited the authority of FAR 6.302-2, “Unusual and Compelling Urgency.” ASC personnel provided adequate rationale in the J&A that supported the unusual and compelling urgency of the acquisition and the reason why only one product could meet the Government requirements. Further, the contract specified a delivery schedule that did not exceed the time limitations established by FAR 6.302-2(d). See Appendix C for additional information on the 23 contracts reviewed.

### ***ASC Personnel Obtained Proper Approval for Sole-Source Contract Awards***

ASC personnel obtained approval from the proper authorities before awarding 23 sole-source contracts. FAR 6.304 defines proper approval authority at various thresholds for the estimated dollar value of the contract. During FY 2010 and FY 2011, the procuring contracting officer was authorized to approve sole-source awards up to \$650,000 and the procuring activity’s competition advocate was authorized to approve sole-source awards more than \$650,000 but not exceeding \$12.5 million. ASC contracting officers approved 3 J&As that had an estimated value of \$650,000 or less. The competition advocate approved the 5 J&As valued at more than \$650,000 but not exceeding \$12.5 million. For greater than \$12.5 million but not exceeding \$62.5 million, the FAR authorizes the head of the procuring activity to provide final approval and the senior procurement executive for actions exceeding \$62.5 million. The Commander, ASC, approved 5 J&As that had an estimated value of more than \$12.5 million but not exceeding \$62.5 million. The senior procurement executive approved 9 J&As for actions exceeding \$62.5 million. ASC personnel obtained the proper approval before contract award for all 23 J&As.

### ***ASC Personnel Complied With Additional Regulations That Supported Sole-Source Determinations***

ASC personnel generally performed market research efforts and included adequate documentation in the contract files to support FAR part 10 and FAR subpart 5.2 compliance for all 23 contracts reviewed. In addition, ASC contracting personnel included adequate documentation to support that the proposed contract actions were properly synopsisized in the Government-wide Point of Entry, which is accessed on the Internet at <https://www.fedbizopps.gov>, with the exception of including the required language outlined in FAR 5.207(c)(15) and (16) in the synopses. As a result, ASC contracting personnel generally complied with FAR part 10 and FAR subpart 5.2 requirements to support ASC sole-source determinations.

## ***ASC Contracting Personnel Conducted Market Research Appropriate to the Circumstance***

ASC contracting personnel completed market research for 12 of the 22<sup>5</sup> contracts that required market research and performed limited or no market research for 10 contracts because the circumstance associated with the contracts justified limited market research. FAR 10.001 states that agencies must conduct market research appropriate to the circumstances before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold. ASC contracting personnel performed limited or no market research for 10 contracts for the following reasons.

- For four contracts, ASC contracting personnel performed limited market research on short-term bridge contracts that they awarded to continue contractor performance before making competitive awards.
- For two contracts, ASC contracting personnel performed limited market research for seven King Air 350ER aircraft where the operational requirements called for fleet uniformity and rapid delivery. ASC contracting personnel had performed extensive market research on earlier procurements for 37 of the same aircraft.
- For the remaining four contracts, ASC contracting personnel performed no market research because the original equipment manufacturer owned the data rights and changing contractors or purchasing the data rights was cost prohibitive and might not have generated cost savings.

ASC contracting personnel were justified in performing limited or no market research for these 10 contracts; therefore, we are not making a recommendation. See Appendix D for additional information on market research performed on the 23 contracts.

## ***ASC Personnel Generally Complied With Synopsis Requirements***

ASC contracting personnel complied with FAR requirements when synopsisizing 19 of the 20 proposed contract actions that required a presolicitation notice. FAR 5.2, "Synopsis of Proposed Contract Actions," requires contracting officers to transmit a notice to the Governmentwide Point of Entry for each proposed contract action expected to exceed \$25,000, other than those covered by one of the 14 exceptions identified in FAR 5.202, "Exceptions." The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. However, for contract FA8620-11-C-4011, ASC personnel referenced that a synopsis was completed in the J&A but could not provide evidence that notice was published to the Governmentwide Point of Entry. ASC contracting personnel issued contract FA8620-11-C-4011 to procure aircraft for Project Liberty efforts supporting contingency operations. ASC contracting personnel reasonably anticipated

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<sup>5</sup> ASC contracting personnel were not required to perform market research on one contract because the estimated value was less than the simplified acquisition threshold, and adequate information was available to justify the sole-source nature of the contract.



limited sources because the contractor was the original equipment manufacturer and fleet uniformity was cost effective, available in required time frames, and in the Government's interest.

In accordance with FAR 5.202(a)(2), (5), or (6), ASC contracting personnel were exempt from issuing a synopsis for 3 of the 23 contracts reviewed. Contracting officers are exempt from issuing a synopsis under FAR 5.202(a)(2) when the proposed contract action is made under the conditions described in FAR 6.302-2, "Unusual and Compelling Urgency," and the Government would be seriously injured if the agency complies with the publicizing and response times specified in the FAR. In addition, contracting officers are exempt from issuing a synopsis under FAR 5.202(a)(5) when the proposed action is for utility services other than telecommunications services and only one source is available. Contracting personnel are also exempt from issuing a synopsis under FAR 5.202(a)(6) when the proposed contract action is an indefinite-delivery contract placed under Subpart 16.5.

ASC contracting personnel did not include one or both of the statements required by FAR 5.207, "Preparation and Transmittal of Synopses," in 5 of the 19 synopses available for our review. FAR 5.207(c)(14),<sup>6</sup> requires the synopsis of noncompetitive contract actions to identify the intended source and a statement of the reason justifying the lack of competition. FAR 5.207(c)(15) requires the synopsis for all noncompetitive contract actions to include a statement that all responsible sources may submit a capability statement, bid, proposal, or quotation, "which shall be considered by the agency." In all five instances, ASC contracting personnel's omission of the intended source or statement that the agency would review any contractor submissions received was prudent given the acquisition. Three of the five contracts were short term bridge contracts used to ensure continuity of service before competitive award, one contract was for a follow on purchase from the original equipment manufacturer, and the final contract was for the acquisition of a modified commercial item. We are not making a recommendation because ASC personnel included sufficient support in the five J&As and within the synopsis notice to show that competition could not be reasonably anticipated. Table 2 identifies the five noncompetitive contracts that did not include the statement or statements required by FAR 5.207(c)(14) or FAR 5.207(c)(15).

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<sup>6</sup> Effective May 31, 2011, the requirements in FAR 5.207(c)(14), FAR 5.207(c)(15)(i), and FAR 5.207(c)(15)(ii) were moved to FAR 5.207(c)(15), FAR 5.207(c)(16)(i), and FAR 5.207(c)(16)(ii), respectively.

**Table 2. Contracts Not Compliant With FAR 5.207(c)(14) and/or FAR 5.207(c)(15)**

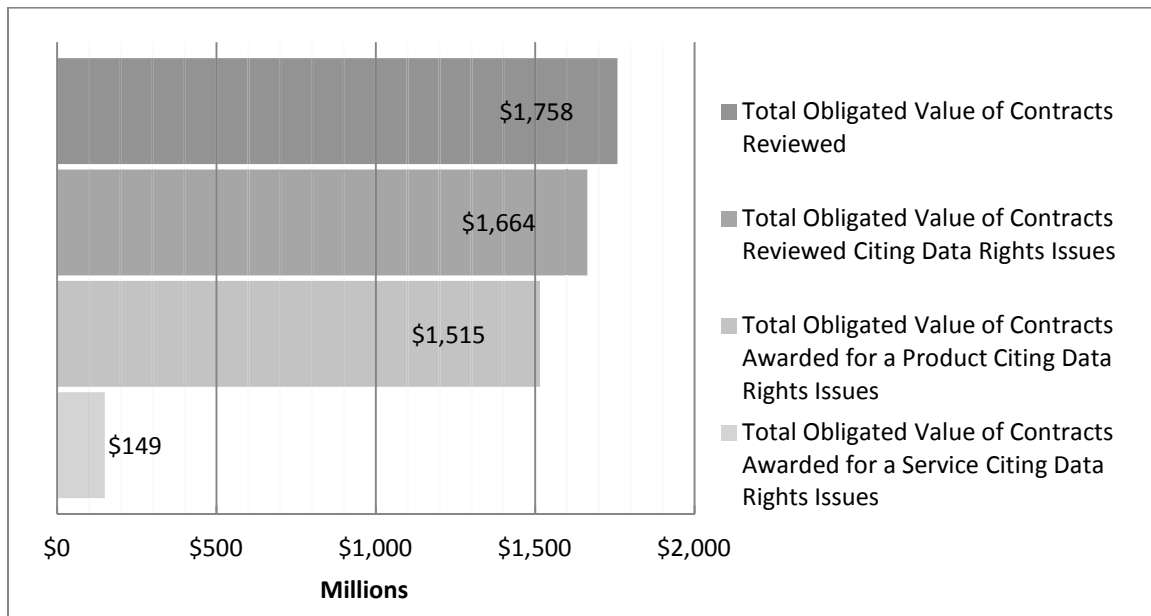
<b>Contract</b>	<b>Synopsis did not include the statement required by FAR 5.207(c)(14)</b>	<b>Synopsis did not include the statement required by FAR 5.207(c)(15)</b>
FA8601-10-C-0042	√	
FA8604-11-C-7450		√
FA8620-10-C-3000		√
FA8620-11-C-3004		√
FA8620-10-C-3009		√

### **ASC Lack of Technical Data Rights Limited Competition**

ASC contracting personnel cited the Government's lack of access to technical data as a main cause for not competing 15 of the 23 contracts reviewed. The Government's lack of technical data was a result of contractors' unwillingness to sell the data to the Government, or that the Government would incur excessive, prohibitive, or duplicative costs to acquire the data. As a result ASC contracting personnel had little choice but to award sole-source contracts to the holders of the data rights, most often the original equipment manufacturer. ASC personnel stated that procuring the data rights during sustainment was not a cost effective option.

ASC contracting personnel did not obtain the technical data to increase competition for 15 of 23 because of prohibitive cost to obtain the technical data, the frequent obsolescence and excessive cost of upgrades to specific systems, or the contractor's refusal to sell the technical data. For example, the J&A for advanced data transfer equipment on the F-16 aircraft, contract FA8615-10-C-6046, identifies the total estimated value of the award at \$48 million, and a nonrecurring requirement. Furthermore, the J&A stated that the contractor, who was the original equipment manufacturer of the advanced data transfer unit, requested \$46 million for the technical data of similar equipment previously procured for the A-10 aircraft. ASC contracting personnel did not purchase the technical data because of the nonrecurring nature of the acquisition and the substantial cost of the technical data. ASC contracting personnel stated that the additional costs would not be justified because no follow-on effort was required and as a result no opportunity to compete future procurements existed to potentially recoup the cost of procuring the technical data. The following figure illustrates the total number and dollar value of contracts that cited the lack of technical data as a factor for other than full and open competition.

**Figure. Total Obligated Amount of Contracts Identifying Technical Data as a Factor for Other Than Full and Open Competition**



## Summary

ASC personnel properly prepared and approved adequate sole-source justifications and approvals for other than full and open competition and generally documented compliance with additional Federal requirements to support those sole-source determinations. ASC contracting personnel adequately justified the use of other than full and open competition on the J&As for all 23 contracts reviewed. ASC contracting personnel complied with FAR 6.303-2 requirements in the J&As, appropriately applied the authority cited for all 23 J&As, and obtained approval from the proper personnel before contract award. Further, ASC contracting personnel generally documented compliance with FAR part 10 and FAR subpart 5.2 in the contract files to support sole-source determinations. We are not making recommendations.

## **Appendix A. Scope and Methodology**

We conducted this performance audit from October 2011 through May 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Our scope was limited to noncompetitive contract awards during FY 2010 and FY 2011 to determine whether Air Force Aeronautical Systems Center (ASC), Wright Patterson Air Force Base contracts awarded without competition were properly justified. We did not review contracts that were awarded for national security purposes, foreign military sales, classified contracts, or contracts that were improperly coded in the Federal Procurement Data System-Next Generation (FPDS-NG) as noncompetitive. In addition, we did not review contracts that were not truly sole source such as contracts that were competitive one-bids or contracts set aside to develop small businesses.

In July 2011, DoD Office of Inspector General management decided the audit teams would issue site reports under individual subprojects from the initial project. In October 2011, we reannounced the revised audit approach of issuing separate audit reports for each audit site as well as the revised audit objective to determine whether DoD noncompetitive contract awards were properly justified as sole source. We removed the specific objective to determine whether negotiated amounts were fair and reasonable.

### **Universe and Sample Information**

We used the FPDS-NG to identify noncompetitive contract actions issued by the Services and Defense agencies during FY 2009 and FY 2010. The queries were limited to actions issued on contracts that were awarded during FY 2009 and FY 2010 and coded as a “noncompetitive delivery order” or “not competed” in FPDS-NG. The queries also excluded contract actions that received more than one offer as identified in FPDS-NG. We selected the four DoD Components with the highest dollar value of awards, specifically, the Army, Navy, Air Force, and the Defense Logistics Agency to identify specific audit locations. We focused our site selection on three sites for the Department of the Air Force that awarded 20 or more C and D type noncompetitive contracts and obligated approximately \$200 million or more during FY 2009 and FY 2010. Our site selection excluded sites that were visited during the review on noncompetitive contract awards for Government Accountability Office Report No. GAO-10-833, “Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received,” July 26, 2010. In addition, we reviewed reports the DoD Office of Inspector General, Acquisition and Contract Management Directorate, issued from FY 2009 to April 2011 that covered acquisition and contracting issues and excluded sites that had been visited on numerous occasions.

After identifying ASC as an audit site, we updated our data from contracts awarded during FY 2009 and FY 2010 to contracts awarded during FY 2010 and FY 2011. The updated data obtained from FPDS-NG resulted in a universe of 64 applicable contracts for ASC. We requested 31 of the 64 contracts to review during our site visit to ASC at Wright Patterson Air Force Base, Ohio. We chose our sample by using several different factors to create a diverse, nonstatistical sample. We selected 31 contracts based on different dollar amounts, products, services, and contract types. However, we did not review contracts within the 31 selected that were awarded for national security purposes, foreign military sales, classified contracts, or contracts that were improperly coded in the FPDS-NG as noncompetitive. In addition, we did not review contracts that were not truly sole source such as contracts that were competitive one bids or contracts set aside to develop small businesses. During our review of the 31 initial contracts we identified and excluded 17 contracts that were outside of our audit scope:

- 12 contracts that were issued for national security purposes,
- 4 contracts were excluded because it was exempt from competition under the small business 8(a) program, and
- 1 contract was miscoded as noncompetitive in FPDS-NG and was competed using full and open competition.

In addition, we also removed two contracts because one contract was transferred to Tinker Air Force Base, Oklahoma, and one contract will be reviewed in a separate audit.

After removing the 19 contracts, we selected an additional 11 contracts from the original 64 contracts identified. Based upon the exclusions, and the additional contracts selected, we reviewed 23 contracts with an obligated value of approximately \$519 million. See Appendix C for additional details on the noncompetitive contracts we reviewed.

## **Review of Documentation and Interviews**

We evaluated documentation against applicable criteria including:

- FAR subpart 5.2, “Synopsis of Proposed Contract Actions”;
- FAR subpart 6.3, “Other Than Full and Open Competition”;
- FAR part 10, “Market Research”; and
- Air Force FAR Supplement Information and Guidance 5306, “Other Than Full and Open Competition,” July 14, 2011.

We interviewed contracting and oversight officials at AFMC, Wright Patterson Air Force Base, Ohio, to obtain command policy and guidance related to the audit objective. We interviewed contracting personnel at ASC, Wright Patterson Air Force Base, Ohio, to discuss noncompetitive contract awards and to obtain information regarding the noncompetitive contract files identified in our sample, specifically about the J&A and market research. We also interviewed the Competition Advocate and the Small Business Specialist at ASC to gain an understanding of their responsibilities and roles in noncompetitive contract awards.

## **Use of Computer-Processed Data**

We relied on computer-processed data from the FPDS-NG to establish the initial universe for this audit by identifying noncompetitive contract actions issued by Military Services and Defense agencies. We also used the data from the FPDS-NG to help determine the contracting organizations to visit and to perform the nonstatistical sample selection. In addition, we used the Electronic Document Access database to obtain contract documentation, such as the contract and modifications to the contract before our site visit to ASC. To assess the accuracy of the computer-processed data, we verified the FPDS-NG and Electronic Document Access data against official records at the contracting activity. We determined that data obtained through the Electronic Document Access database was sufficiently reliable to accomplish our audit objective when compared with contract records. We identified one miscoding in the data reviewed from FPDS-NG when compared with contract documentation; however, we used FPDS-NG only to identify the universe, to help determine the contracting organizations to visit, and to identify our nonstatistical sample.

## **Use of Technical Assistance**

We held discussions with personnel from the Department of Defense Office of Inspector General's Quantitative Methods and Analysis Division. We determined that we would use FPDS-NG data to select a nonstatistical sample of contracting activities and then use FPDS-NG data to select a nonstatistical sample of noncompetitive contracts to review. During our site visit, we worked with ASC contracting personnel to verify that the selected contracts met the scope limitations of our review and to identify additional contracts that did not meet the selection criteria. Our nonstatistical sample was limited to specific contracts, and our results should not be projected across other ASC-issued or Air Force-issued contracts.

## **Prior Coverage**

During the last 5 years, the Government Accountability Office (GAO) issued three reports discussing DoD use of noncompetitive contracts, the DoD IG issued four reports discussing DoD use of noncompetitive contracts, and the Air Force Audit Agency has issued one report discussing Air Force noncompetitive contract use. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed over the Internet at <http://www.dodig.mil/audit/reports>. Unrestricted Air Force Audit Agency reports can be accessed over the Internet at <https://www.afaaf.af.mil/>.

## **GAO**

GAO Report No. GAO-12-263, "Defense Contracting: Improved Policies and Tools Could Help Increase Competition on DOD's National Security Exception Procurements," January 2012

GAO Report No. GAO-11-469, "DoD Should Clarify Requirements for Assessing and Documenting Technical-Data Needs," May 2011

GAO Report No. GAO-10-833, “Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received,” July 26, 2010

***DoD IG***

DoD IG Report No. DODIG-2012-077, “Naval Surface Warfare Center Crane Contracts Awarded Without Competition Were Adequately Justified,” April 24, 2012

DoD IG Report No. DODIG-2012-076, “Army Contracting Command – Rock Island Contracts Awarded Without Competition Were Properly Justified,” April 19, 2012

DoD IG Report No. DODIG-2012-073, “Natick Contracting Division’s Management of Noncompetitive Awards Was Generally Justified,” April 10, 2012

DoD IG Report No. DODIG-2012-042, “Naval Air Systems Command Lakehurst Contracts Awarded Without Competition Were Properly Justified,” January 20, 2012

***Air Force Audit Agency***

Air Force Audit Agency Report F2008-0059-FCI000, “Justification and Approval for Air Force Acquisitions Ogden Air Logistics Center,” August 22, 2008



# **Appendix B. Federal Acquisition Regulation (FAR) Criteria**

## **FAR Subpart 5.2, “Synopsis of Proposed Contract Actions”**

FAR 5.201, “General,” requires agencies to provide a synopsis of proposed contract actions for the acquisition of supplies and services. The contracting officer must submit the synopsis to the Government-wide Point of Entry that can be accessed on the Internet at <https://www.fedbizopps.gov>. FAR 5.202, “Exceptions,” lists circumstances when the contracting officer does not need to submit a synopsis, such as when a contract action cites an unusual and compelling urgency as the exception to full and open competition. In addition, FAR 5.203, “Publicizing and Response Time,” requires the synopsis to be published for at least 15 days before issuing a solicitation or proposed contract action that the Government intends to solicit and negotiate with only one source under the authority of FAR 6.302. However, the contracting officer may establish a shorter period of issuance for commercial items. FAR 5.207, “Preparation and Transmittal of Synopses,” requires each synopsis submitted to the Government-wide Point of Entry to include certain data elements as applicable, such as the date of the synopsis, the closing response date, a proposed solicitation number, a description, and the point of contact or contracting officer.

## **FAR Subpart 6.3, “Other Than Full and Open Competition”**

FAR subpart 6.3 prescribes the policies and procedures for contracting without full and open competition. Contracting without full and open competition is a violation of statute and could be a violation of 10 U.S.C. §2304, unless permitted by an exception provided in FAR 6.302, “Circumstances Permitting Other Than Full and Open Competition.”

FAR 6.302 lists the seven exceptions for contracting without full and open competition:

- FAR 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements;”
- FAR 6.302-2, “Unusual and Compelling Urgency;”
- FAR 6.302-3, “Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services;”
- FAR 6.302-4, “International Agreement;”
- FAR 6.302-5, “Authorized or Required by Statute;”
- FAR 6.302-6, “National Security;” and
- FAR 6.302-7, “Public Interest.”

A contracting officer must not begin negotiations for or award a sole-source contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification. FAR 6.303-2, “Content,” requires each

justification to contain sufficient facts and rationale to justify the use of the authority cited. At a minimum each justification must contain:

- the name of the agency and contracting activity and identification of the document as a “Justification for other than full and open competition;”
- a description of the action being approved;
- a description of the supplies or services required to meet the agency’s needs, including the estimated value;
- the statutory authority permitting other than full and open competition;
- a demonstration that the contractor’s unique qualifications or the nature of the acquisition requires the use of the authority cited;
- a description of the efforts made to ensure offers are submitted from as many sources as practicable, including whether a notice was or will be publicized;
- the contracting officer’s determination that the cost to the Government will be fair and reasonable;
- a description and the results of the market research conducted or, if market research was not conducted, a reason it was not conducted;
- any other facts supporting the use of other than full and open competition;
- a listing of sources that expressed written interest in the acquisition;
- a statement of the actions the agency may take to overcome any barriers to competition before a subsequent acquisition; and
- the contracting officer’s certification that the justification is accurate and complete to the best of their knowledge and belief.

FAR 6.304, “Approval of the Justification,” identifies the person responsible for approving the J&A based on the value of the proposed contract. The thresholds discussed are the thresholds that were in place during the scope of the audit. The contracting officer approves the J&A for a proposed contract not exceeding \$550,000. The competition advocate approves the J&A for a proposed contract of more than \$550,000 but not exceeding \$11.5 million. A general or flag officer, if a member of the military, or a civilian in a position above GS-15 under the general schedule, approves the J&A for a proposed contract of more than \$11.5 million but not exceeding \$78.5 million. The senior procurement executive of the agency approves the J&A for a proposed contract of more than \$78.5 million.

## **FAR Part 10, “Market Research”**

FAR part 10 prescribes policies and procedures for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. Agencies are required to conduct market research appropriate to the circumstance before soliciting offers for acquisitions with an estimated value over the simplified acquisition threshold. Agencies are required to use the results of market research to determine if there are appropriate sources or commercial items capable of satisfying the agency’s requirements. The extent of market research the agencies conduct varies, depending on factors such as urgency, estimated dollar value, complexity, and past experience. Agencies use market research techniques, such as contacting knowledgeable individuals in Government and industry, reviewing results of recent

market research, publishing formal requests for information, querying databases, participating in on-line communication, obtaining source lists of similar items, and reviewing available product literature. Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

## Appendix C. Noncompetitive Contracts Reviewed

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Product or Service	Description	Award Date	Contract Type	Authority Cited	Contract Value*
1	FA8601-10-C-0026	Service	Logistics Support Services	3/31/2010	FFP	FAR 6.302-1	\$9,570,792
2	FA8601-10-C-0042	Product	Terahertz Imaging System	7/06/2010	FFP	FAR 6.302-1	\$890,000
3	FA8601-10-C-0065	Service	Motor Pool Operations	10/1/2010	FFP	FAR 6.302-1	\$1,849,916
4	FA8604-11-C-7001	Service	ADP Systems Development Services, Support for Centralized Access for Data Exchange System	3/16/2011	FFP	FAR 6.302-1	\$6,500,000
5	FA8604-11-C-7450	Service	Other ADP & Telecommunication Services	12/18/2010	FFP	FAR 6.302-1	\$744,965
6	FA8604-11-D-7950	Service	Technical Representative Services-Aircraft	12/27/2010	FFP	FAR 6.302-1	\$2,551,680
7	FA8620-10-C-3000	Service	Program Management Support Services	11/1/2009	Cost No Fee / FFP	FAR 6.302-1	\$1,380,569
8	FA8620-11-C-3004	Product	Aircraft, Fixed Wing-Global Hawk, Low Rate Initial Production Lot 8	12/14/2010	FPI-Firm Target	FAR 6.302-1	\$352,876,093
9	FA8620-11-C-4011	Product	Aircraft, Fixed Wing-King Air 350 Extended Range Aircraft	10/29/2010	FFP	FAR 6.302-1	\$37,433,212
10	FA8620-11-C-4021	Service	Program Management Support Services	12/16/2010	FFP	FAR 6.302-1	\$859,210
11	FA8625-10-C-6505	Product	Boeing C-40 Executive Transport Aircraft	12/18/2009	FFP	FAR 6.302-1	\$79,415,631
12	FA8628-10-C-2254	Product	B-1 Radar Reliability and Maintainability Improvement Program Production	9/30/2010	FFP	FAR 6.302-1	\$113,927,745

Acronyms and footnotes used throughout Appendix C are defined on the final page of Appendix C

## Appendix C. Noncompetitive Contracts Reviewed (cont.)

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Product or Service	Description	Award Date	Contract Type	Authority Cited	Contract Value*
13	FA8628-10-D-1000	Service	B-52 Flexible Acquisition and Sustainment(FAS) indefinite delivery, indefinite quantity (IDIQ) contract to support the B-52 weapon system	9/29/2010	FFP	FAR 6.302-1	\$8,887,806
14	FA8615-10-C-6046	Product	Advanced Data Transfer Unit for the F-16 Aircraft	9/24/2010	FFP	FAR 6.302-1	\$3,875,643
15	FA8607-11-C-2793	Product	16MM Inverted Image Intensifier Tubes	6/24/2011	FFP	FAR 6.302-1	\$2,626,936
16	FA8621-11-C-6290	Product	C-17 Weapon System Trainer and Loadmaster Station and necessary support	12/20/2010	FFP	FAR 6.302-1	\$44,650,914
17	FA8604-11-C-7002	Service	Support in Accordance with Emerson Network Power	1/21/2011	FFP	FAR 6.302-1	\$72,000
18	FA8625-11-C-6597	Product	C-130J Technical Engineering Data, Logistic Support Data, Reliability and Maintainability Program, Onsite Support	2/1/2011	FFP, Cost & T&M	FAR 6.302-1	\$129,213,252
19	FA8620-10-C-3009	Service	Advisory & Assistance Services Support	10/30/2009	T&M	FAR 6.302-1	\$389,881
20	FA8620-10-C-4000	Product	Aircraft, Fixed Wing-Global Hawk, Low Rate Initial Production Lot 10	5/20/2010	FFP	FAR 6.302-1	\$580,600,000
21	FA8620-10-C-4007	Product	Aircraft, Fixed Wing-Global Hawk, Low Rate Initial Production lot 9	5/20/2010	FFP, FPI,, Firm Target	FAR 6.302-1	\$287,053,364

Acronyms and footnotes used throughout Appendix C are defined on the final page of Appendix C

## Appendix C. Noncompetitive Contracts Reviewed (cont.)

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Product or Service	Description	Award Date	Contract Type	Authority Cited	Contract Value*
22	FA8620-11-C-4008	Product	King Air 350 Extended Range Aircraft	12/14/2010	FFP	FAR6.302-2	\$15,174,040
23	FA8620-11-C-3006	Product	Reconnaissance Pods	1/21/2011	FFP	FAR 6.302-1	\$77,580,152
	<b>Total Reviewed</b>						<b>\$1,758,123,801</b>

\*The contract value is the base award value excluding options or the maximum ceiling price at award.

CPFF	Cost-Plus-Fixed-Fee	FPI	Fixed-Price-Incentive	FAR 6.302-1	Only One Responsible Source
FFP	Firm-Fixed-Price	T&M	Time-and-Materials	FAR 6.302-2	Unusual and Compelling Urgency

## Appendix D. Market Research Conducted

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Estimated Value on the Justification and Approval (J&A)	Specific Steps Performed	Results of Market Research or Justification for not performing Market Research	Supporting Documentation	Market Research Considered Adequate
1	FA8601-10-C-0026	\$11,258,239	Telephone calls were made to Tinker, Warner Robbins, and Edwards Air Force Bases to determine how their Logistics Support Services were contracted. A Sources Sought synopsis was posted to advise industry members of this bridge acquisition and to solicit capability packages for the competed follow-on contract	The telephone calls provided information that each base has the same or similar type of contract, but not one base has the entire four functions on one contract. Six responses were received from the Sources Sought synopsis, but the incumbent was deemed as the only technically acceptable contractor	Market research memorandum, J&A, and Sources Sought synopsis	Yes
2	FA8601-10-C-0042	\$890,000	Market research was completed to identify if commercial items were available. A Sources Sought synopsis was posted	The commerciality market research identified similar products in the marketplace, with the incumbent being the only one that met technical requirements. No responses were received from the synopsis	Memorandum	Yes
3	FA8601-10-C-0065	\$1,600,829	A Sources Sought synopsis was posted	No responses were received	Memorandum for file and Sources Sought synopsis	Yes

Footnotes used throughout Appendix D are defined on the final page of Appendix D.



## Appendix D. Market Research Conducted (cont.)

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Estimated Value on the Justification and Approval (J&A)	Specific Steps Performed	Results of Market Research or Justification for not performing Market Research	Supporting Documentation	Market Research Considered Adequate
4	FA8604-11-C-7001	\$34,100,000	An internet search was performed and a Sources Sought synopsis was posted	Industry knowledge was collected from end users. Five responses were received from the synopsis, in which three wanted to by the data rights, but the incumbent was unwilling to sell the data rights	Acquisition plan and Sources Sought synopsis	Yes
5	FA8604-11-C-7450	\$625,000	No market research was performed	Short-term service bridge contract.	J&A	Yes <sup>1</sup>
6	FA8604-11-D-7950	\$140,250,000	A Sources Sought synopsis was posted to identify sources interested in subcontracting possibilities	No responses were received	Sources Sought synopsis	Yes
7	FA8620-10-C-3000	\$23,000,000	No market research was performed	Short-term service bridge contract.	J&A	Yes <sup>1</sup>
8	FA8620-11-C-3004	\$8,625,000,000 <sup>(2)</sup>	No market research was performed	Original equipment manufacturer and Government does not own the data rights to the program.	J&A	Yes <sup>1</sup>
9	FA8620-11-C-4011	\$45,000,000	Limited market research was performed	Urgent requirement and fleet uniformity.	J&A	Yes <sup>1</sup>
10	FA8620-11-C-4021	\$1,044,309	Limited market research was performed	Short-term service bridge contract.	Synopsis	Yes <sup>1</sup>

Footnotes used throughout Appendix D are defined on the final page of Appendix D.

## Appendix D. Market Research Conducted (cont.)

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Estimated Value on the Justification and Approval (J&A)	Specific Steps Performed	Results of Market Research or Justification for not performing Market Research	Supporting Documentation	Market Research Considered Adequate
11	FA8625-10-C-6505	\$1,250,000,000 <sup>(2)</sup>	A Sources Sought synopsis was posted	The incumbent was the only source to submit a response	Sources Sought synopsis	Yes
12	FA8628-10-C-2254	\$195,000,000	A Defense Contract Management Agency audit was conducted to validate data rights assertions for the B-1 hardware. A Sources Sought synopsis was posted	The Defense Contract Management Agency audit validated and concurred with the incumbent's Data Rights Assertions for the B-1 program. Three responses were received to the synopsis. Two of the responses withdrew interest after receiving clarification on the Government's interest and availability of technical data	Defense Contract Management Agency audit and Sources Sought synopsis	Yes
13	FA8628-10-D-1000	\$11,900,000,000 <sup>(2)</sup>	No market research was performed	Original equipment manufacturer and Government does not own the data rights to the program.	J&A	Yes <sup>1</sup>
14	FA8615-10-C-6046	\$48,000,000	Internet keyword search was conducted, as well as querying of other aircraft program offices	The market research demonstrated that no manufacturer other than the incumbent produces F-16 qualified advanced data transfer equipment at this time	J&A	Yes
15	FA8607-11-C-2793	\$11,500,000	Testing done by the Navy for the suitability of alternatives to the ITT tubes was analyzed. A Sources Sought synopsis was posted	Testing done by the Navy revealed that tubes produced by Photonis were not adequate. Three companies responded to the synopsis, but only ITT's product met the Government's requirements	J&A and Sources Sought synopsis	Yes

Footnotes used throughout Appendix D are defined on the final page of Appendix D.

## Appendix D. Market Research Conducted (cont.)

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Estimated Value on the Justification and Approval (J&A)	Specific Steps Performed	Results of Market Research or Justification for not performing Market Research	Supporting Documentation	Market Research Considered Adequate
16	FA8621-11-C-6290	\$3,923,800,000	Historical data, internet searches, the request for information, and telephone discussions were used to collect competition data	Though there are facets of this acquisition that are not "Military-unique", i.e. contractor logistics support and most of aircrew instruction, the Government has concluded that this capability does not either exist in the commercial sector, nor are of a type customarily used by the general public or by non-governmental entities. There is a lot of data available for contractors to successfully create a bid for this acquisition. Although the data is available and would be provided to competing bidders, a complete data package would require substantial non-recurring engineering support to assimilate. This alone would result in significantly higher costs and schedule delays. The C-17 Training Systems data library is already available at the Government's disposal.	Market research report	Yes
17	FA8604-11-C-7002	\$72,000	This contract was not required to complete market research, per FAR 10.001(a)(2)(iii)	Not Applicable	Not Applicable	Not Applicable

Footnotes used throughout Appendix D are defined on the final page of Appendix D.

## Appendix D. Market Research Conducted (cont.)

### Noncompetitive Contracts Awarded by ASC Contracting Division From FY 2010 Through FY 2011

	Contract Number	Estimated Value on the Justification and Approval (J&A)	Specific Steps Performed	Results of Market Research or Justification for not Performing Market Research	Supporting Documentation	Market Research Considered Adequate
18	FA8625-11-C-6597	\$12,300,000,000 <sup>(2)</sup>	Acquisition prices for various military cargo aircraft were reviewed and compared to the price of the C-130J. Prices per unit of transport power were compared to the C-130J, as well.	The price of the C-130J aircraft was well below the average price and the median price of aircraft surveyed. The C-130J's price was half the average value and less than the median value surveyed.	J&A and market research report	Yes
19	FA8620-10-C-3009	\$250,000	No market research was performed	Short-term service bridge contract.	J&A	Yes <sup>1</sup>
20	FA8620-10-C-4000	\$8,625,000,000 <sup>(2)</sup>	No market research was performed	Original equipment manufacturer and Government does not own the data rights to the program.	J&A	Yes <sup>1</sup>
21	FA8620-10-C-4007	\$8,625,000,000 <sup>(2)</sup>	No market research was performed	Original equipment manufacturer and Government does not own the data rights to the program.	J&A	Yes <sup>1</sup>
22	FA8620-11-C-4008	\$17,000,000	Limited market research was performed	Urgent requirement and fleet uniformity.	J&A	Yes <sup>1</sup>
23	FA8620-11-C-3006	\$72,000,000	A Sources Sought synopsis was posted	Two responses were received, but neither firm demonstrated access to the incumbent's proprietary data necessary to perform necessary requirements	Sources Sought synopsis and J&A	Yes

<sup>1</sup> Although limited or no market research was conducted, the rationale provided for conducting limited or no market research was considered appropriate.

<sup>2</sup> Class J&A





# Inspector General Department of Defense

